

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

<b>JEFF MARTIN</b>	)	
Claimant	)	
	)	
VS.	)	
	)	
<b>MANPOWER TEMPORARY SERVICES</b>	)	
Respondent	)	Docket No. 1,016,020
	)	
AND	)	
	)	
<b>TRANSPORTATION INSURANCE CO.</b>	)	
Insurance Carrier	)	

**AND**

<b>JEFF MARTIN</b>	)	
Claimant	)	
	)	
VS.	)	Docket No. 1,016,021
	)	
<b>SUPERIOR INDUSTRIES INTERNATIONAL)</b>	)	
Self-Insured Respondent	)	

**ORDER**

Claimant requests review of the July 7, 2004 preliminary hearing Order entered by Administrative Law Judge (ALJ) Kenneth J. Hursh.

**ISSUES**

The ALJ found claimant failed to sustain his burden that he is in need of medical treatment for his finger laceration which the subject of Docket No. 1,016,020. He further found that while claimant had established the requisite elements to substantiate a low back injury, which is the subject of Docket No. 1,016,021, the need for further treatment was,

based upon the claimant's uncontroverted evidence, limited to exclusively conservative measures that did not require a physician's direction. Accordingly, Superior Industries (Superior) was ordered to reimburse claimant for the cost of ibuprofen upon proper documentation of the expense.

The claimant requests review of these findings. Claimant alleges the ALJ exceeded his jurisdiction by limiting claimant's medical care to the reimbursement of ibuprofen in Docket No. 1,016,020. He also takes issue with the ALJ's refusal to order a physician to provide claimant with treatment, consistent with the recommendations made by Dr. Edward J. Prostic. Claimant's counsel alleges the ALJ "exceeded his jurisdiction when he formulated his own opinions as to the level of medical treatment intended by Dr. Prostic".<sup>1</sup>

Manpower Temporary Services (Manpower), respondent for docket 1,016,020, argues that the ALJ was correct in denying claimant's request for further medical treatment for his compensable finger laceration. Manpower also contends, claimant's brief to the Board makes no mention of the ALJ's ruling as it relates to the earlier finger injury. Manpower notes that even claimant's own expert, Dr. Prostic, failed to offer any further treatment suggestions with respect to claimant's finger. In fact, Dr. Prostic commented that "it is unlikely that he [claimant] would have sufficient benefit from exploration and repair of the digital nerve to make it worthwhile."<sup>2</sup> Thus, Manpower contends the ALJ's Order should be affirmed as it relates to Docket No. 1,016,020.

Superior, respondent for docket 1,016,021, asserts the Board has no jurisdiction to hear this dispute. In addition, Superior suggests that the ALJ's Order was justified based upon claimant's evidence and should, therefore, be affirmed.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Having reviewed the whole evidentiary record filed herein, the Board makes the following findings of fact and conclusions of law:

At issue is claimant's request for medical treatment stemming from what he describes as two separate accidents. The first occurred on December 11, 2003 when claimant lacerated his finger opening a tool box. Respondent Manpower stipulates this accident was compensable and has provided treatment as required by the Act. Claimant never requested further treatment from Manpower although he testified that he did consult with his private physician about the injury. Those records were not offered into evidence.

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<sup>1</sup> Claimant's Brief at 1 (filed on July 30, 2004).

<sup>2</sup> P.H. Trans., Cl. Ex. 1 at 3.

Shortly after this first accident, claimant's employment was "transferred" to respondent Superior. Up until December 13, 2003, claimant had been employed directly by Manpower. But on December 13, 2003, following a preemployment physical and the completion of additional paperwork, claimant became a direct employee of Superior.

Claimant alleges a second injury to his low back occurred over a series of dates, beginning on his first day of work culminating on his last date of work, March 16, 2004, when he was terminated for excessive absences. It is uncontroverted that claimant's job for respondent was rather strenuous. He was required to lift freshly poured and formed wheels from a mold and turn and place them on a line. Claimant testified that he noticed a soreness in his back from the first few days working at Superior.

Then, on February 1, 2004, claimant had some dental work done and was required to take hydrocodone for pain. When he reported to work he advised Les, the supervisor, of the medication he was taking and the fact that he believed he should not be working on heavy machinery due to the effects of the medication. Claimant says Les told him to get to work. After a period of time, claimant began to notice his back was hurting and he had shooting pains down his right leg. Again, he told Les who told him to get to work.

Claimant apparently continued to work for Superior at his regular job after February 1, 2004, although he appears to have had some absences. Claimant testified the work caused his back and leg to get a little worse.<sup>3</sup> During this time, claimant did not fill out any accident report nor did he request medical treatment.

On March 16, 2004, claimant was placed on suspension pending termination for excessive absences. Claimant says he was not fired on this date although the paperwork indicates otherwise. Claimant then says he filled out an accident report indicating he injured his low back on February 1, 2004.

Following the hearing, the ALJ issued an Order denying any treatment for the finger laceration encompassed by Docket No. 1,016,020, having concluded the claimant failed to sustain his burden of proof. Claimant has offered no argument in his brief to suggest that the ALJ erred in denying claimant treatment for this accident. Thus, it is difficult if not impossible to discern the purpose of claimant's appeal on that claim.

As for the low back injury encompassed by Docket No. 1,016,021, the ALJ granted claimant's request for treatment, at least as to ibuprofen, one of the conservative measures outlined by Dr. Prostic in his report. However, claimant complains that the ALJ exceeded his jurisdiction in refusing his request for treatment. Although couched in terms of the ALJ exceeding his jurisdiction when "he formulated his own opinions as to the level of medical

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<sup>3</sup> P.H. Trans. at 14-15.

treatment intended by Dr. Prostic<sup>4</sup>, claimant's argument is aimed at challenging the ALJ's conclusion that claimant is not in need of any further treatment for his low back injury.

Not every alleged error in law or in fact is reviewable from a preliminary hearing order. The Board's jurisdiction to review preliminary hearing orders is generally limited to the following issues, which are deemed jurisdictional:

- (1) Did the worker sustain an accidental injury?
- (2) Did the injury arise out of and in the course of employment?
- (3) Did the worker provide both timely notice and written claim of the accidental injury?
- (4) Is there any defense that goes to the compensability of the claim?<sup>5</sup>

Additionally, the Board may review those preliminary hearing orders where a judge has exceeded his or her jurisdiction.<sup>6</sup>

Claimant has failed to offer any explanation whatsoever as to Docket No. 1,016,020 to explain the basis of his appeal. Having failed to establish a jurisdictional issue for this docketed case, claimant's appeal in Docket No. 1,016,020 is dismissed.

Although the claimant alleges the ALJ exceeded his jurisdiction in "limiting the [c]laimant's medical care to the reimbursement of ibuprofen" in Docket No. 1016,021, the Board finds that it does not have jurisdiction over this matter. Although articulated somewhat differently, distilled to its essence claimant alleges an entitlement to ongoing medical care. The Board does not have jurisdiction to consider appeals from preliminary hearing orders pertaining to ongoing medical care.<sup>7</sup> Thus, claimant's appeal in Docket No. 1,016,021 must be dismissed.

**WHEREFORE**, it is the finding, decision and order of the Board that the claimant's appeal of the Order of Administrative Law Judge Kenneth J. Hursh dated July 7, 2004, is hereby dismissed.

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<sup>4</sup> Claimant's Brief at 1 (filed July 30, 2004).

<sup>5</sup> K.S.A. 44-534a (Furse 2000).

<sup>6</sup> K.S.A. 2003 Supp. 44-551(b)(2)(A).

<sup>7</sup> *Ruch v. Keim Transportation*, Docket No. 167,666, 1997 WL 570029 (Kan. WCAB July 24, 1997).

**IT IS SO ORDERED.**

Dated this \_\_\_\_\_ day of August 2004.

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BOARD MEMBER

c: William L. Phalen, Attorney for Claimant  
Roger E. McClellan, Attorney for Respondent and its Insurance Carrier  
Troy A. Unruh, Attorney for Self-Insured Respondent  
Kenneth J. Hursh, Administrative Law Judge  
Paula S. Greathouse, Workers Compensation Director